

CHAPTER 771

ADMINISTRATIVE GRIEVANCE SYSTEM AND PROCEDURES

1. POLICY AND PURPOSE

a. *Policy.* This Administrative Grievance System (AGS) implements Chapter 5, Code of Federal Regulations (CFR), Part 771, by creating an internal system for resolving employee grievances over certain matters under the control of management. It establishes policy, delegates authority, assigns responsibilities, and provides a procedure to be used by employees in filing grievances, and management officials authorized to make decisions on grievances.

b. *Purpose.* To provide a fair, equitable, and timely forum for review and resolution of disputes on employment-related matters; to establish a systematic method for employees to seek personal relief in a matter of concern or dissatisfaction.

2. **ASSISTANCE.** Please refer to Chapter 001 of this Manual for the telephone number to call for additional information or further assistance relative to this Subchapter.

3. DEFINITIONS

a. *Deciding Official.* Official who is authorized to make decisions on grievances. The deciding official must be at a higher organizational level than any employee involved in the grievance, or having a direct interest in the matter being grieved, unless the deciding official is the head of the activity or command.

b. *Grievance.* A request by an employee, or a group of employees, for personal relief in a matter of concern or dissatisfaction not excluded by this Chapter, which is subject to the control of Activity management and relates to the employment of the employee(s).

c. *Personal Relief.* The specific remedy personally benefiting the grievant(s) and may not include disciplinary action or other action affecting another employee.

d. *Grievance File.* A separate file which contains all documents related to the grievance, including, but not limited to, the written grievance filed by the employee(s), any statements of witnesses, records or copies thereof, the report of the fact finder when used, statements made by the parties to the grievance, and the Activity decision.

e. *Fact Finder.* An individual appointed by a deciding official to conduct an investigation of a grievance. The fact finder must be a person who has not been involved in the act or event giving rise to the grievance, and who does not occupy a position subordinate to any official who recommended, advised, made a decision on, or who otherwise is or was involved in the matter.

4. TIME LIMITS

a. A grievance must be filed within fifteen (15) calendar days of the act or event giving rise to the grievance or from the date that the employee became aware of (or reasonably should have become aware of) the act or event. The time limit for filing an administrative grievance will be extended when ADR techniques are used prior to a formal grievance being filed.

b. When calculating time limits under this AGS, the day of an action or receipt of a document is not counted, and all time limits are counted in calendar days. The last day of the time limit is counted unless it is a Saturday, a Sunday, or a legal holiday, in which case the time limit expires at the end of the grievant's next scheduled workday.

5. REQUIRED EMPLOYEE COVERAGE

a. The provisions of this Chapter apply to:

(1) All employees serviced by Human Resources Office (HRO), Norfolk, and to former employees for whom a remedy can be provided.

(2) Activities who do not have their own AGS instruction or Negotiated Grievance Procedure, and who choose to use this instruction.

b. This grievance system does NOT cover:

(1) Non-appropriated fund employees.

(2) A physician, dentist, or nurse, or other employee appointed under special authority.

(3) Civilian marine employees of the Military Sealift Command.

6. GRIEVANCE COVERAGE

a. This AGS applies to any matter of concern or dissatisfaction (grievance) relating to the employment of an another employee which is subject to the control of agency management, including any matter on which an employee alleges that coercion, reprisal, or retaliation has been practiced against him/her for filing a grievance under this Chapter.

b. A grieving employee and his/her representative shall have full access to relevant information, and shall be permitted a reasonable amount of official duty time to present a grievance and to communicate with management and personnel officials. They may also be given official duty time to prepare a grievance.

c. A grievance, or portion of a grievance, may be canceled or temporarily suspended at the grievant's request. A grievance may also be canceled if the grievant or grievance is excluded from coverage, if the grievant fails to comply with applicable time limits or procedural requirements, or requests actions be taken against another employee, or the employee raises the matter under another formal dispute resolution process.

7. ISSUES EXCLUDED FROM THE AGS

- a. Issues raised by the employee in any other grievance, appeal, or complaint are not grievable under this AGS.
- b. Appendix A of this Chapter lists the issues excluded by law, policy or regulation from the AGS.

8. RESPONSIBILITIES

a. Activity Heads:

(1) Are authorized to decide all formal grievances filed by employees under their command, except when they are personally involved in the events giving rise to the grievance. In such cases, the next higher level of management in the chain of command will act as the deciding official. The mere allegation of personal involvement of an Activity Head does not suffice to remove the grievance from that level, however.

(2) May delegate authority to decide formal grievances to subordinate managers and supervisors to the extent they deem appropriate.

b. Deciding Officials should:

(1) Contact a Labor Relations Specialist in HRO Norfolk immediately upon receipt of the formal grievance.

(2) Follow grievance procedures found in paragraph 9 of this Chapter.

c. Grievant(s). Employees must follow the AGS procedures found in paragraph 9 of this Chapter. Employee(s) covered by this AGS are entitled to:

(1) Present grievances, and to communicate with supervisors and/or managers and officials in HRO Norfolk without restraint, interference, coercion, discrimination, or reprisal.

(2) Have their grievances considered expeditiously, fairly, and impartially.

(3) Be represented by someone of their choosing in presenting their grievances, have full access to relevant information, and be permitted a reasonable amount of official duty time to research, prepare, and present their grievance.

d. *HRO Norfolk* will:

(1) Provide advice, guidance, and necessary assistance on the processing of grievance(s) to Activity Heads, deciding officials, and employees.

(2) Establish and maintain a separate file for each written grievance filed under this AGS, ensuring that:

(a) AGS files are retained for four years in accordance with applicable laws and regulations.

(b) Each file contains all documents or copies of documents related to the grievance.

9. ALTERNATE DISPUTE RESOLUTION (ADR)

a. ADR techniques are strongly encouraged. These techniques encompass a broad range of informal, non-adversarial techniques for settling employee-management disagreements.

b. ADR techniques include mediation, facilitation, conciliation, and fact-finding. These techniques emphasize problem solving as a means of dealing with conflict and seeking solutions satisfactory to all parties. When an ADR technique is used, but a satisfactory resolution is not reached, the grievant will have 15 calendar days from the completion of the ADR process, to file a formal grievance.

c. Problem Solving/Informal Process:

(1) An employee may informally present a work-related problem to his or her immediate supervisor before filing a formal grievance. If the problem involves a matter or action directly involving that supervisor and the employee has been unable to resolve the matter with that supervisor, the employee may present the matter to the next level supervisor, if any, within the activity or command. The problem must be presented within 15 days following the date of the act or event that the employee believes created the problem, or the date the employee became aware of (or reasonably should have become aware of) the act or event. The employee may present a matter of concern regarding a continuing practice or condition at any time.

(2) A supervisor must consider the employee's problem and attempt to resolve it within 15 days, and no later than 30 days, from the date the problem is first brought to the supervisor's attention, even though it may not be covered by the grievance process. Where appropriate, the use of a neutral third party (e.g., conciliator, facilitator, or mediator) is encouraged. If the employee presents the problem orally, the supervisor's determination may be oral or written. If the problem is presented in writing, the determination must be in writing. If the problem is not resolved, the supervisor shall inform the employee of the time limits for filing a formal grievance. If the supervisor believes the matter is not covered by the grievance process, the supervisor shall so inform the employee and advise the employee of the appropriate process, if any, for resolving the problem.

10. AGS PROCEDURE

a. *Employee(s)/Grievant(s)* must:

(1) File a formal, written grievance with the deciding official (see paragraph 10 of this Chapter). A grievance must be filed within 15 calendar days from the act or event giving rise to the grievance OR from the date that the employee became aware of (or reasonably should have become aware of) the act or event, unless ADR techniques are used prior to the grievant filing a formal grievance.

(2) Be given the right to represent themselves or to be represented by an individual of their own choice in filing a grievance.

(3) Sign, date, and ensure the grievance contains sufficient detailed statement(s) of the specific issue(s) and the personal relief sought.

(4) Provide all copies of any documents they possess related to the grievance.

(5) Provide the name, address, and telephone number of the employee's representative, if any.

b. The *Deciding Official* must:

(1) Decide whether to allow the grievant(s) choice of representative. A representative may be disallowed when it would result in a conflict of interest or position, conflict with mission priorities, or result in unreasonable costs.

(2) Determine whether to join similar or identical grievances.

(3) Decide whether to appoint a fact finder to conduct an investigation and, when authorized, make recommendations concerning the disposition of the grievance. The fact finder must not have been involved in the grievance or the matter being grieved or occupy a position subordinate to any official involved in the matter, unless the official involved is the head of the activity component.

(4) Determine a reasonable amount of official time to afford the grievant and representative to present a grievance.

(5) Extend time frames when warranted by special circumstances, e.g., when those involved are geographically dispersed or where an outside fact finder is used in the process.

(6) Fully and fairly consider the grievance, and issue a written decision, which includes the basis for his/her decision. The decision shall be issued as soon as possible, but no later than 60 calendar days from the filing of the formal grievance.

The deciding official's decision on the merits of the grievance is final and is not subject to review.

11. **HOW AND WHERE TO PRESENT A GRIEVANCE.** Grievances must be presented in writing to the appropriate receiving official. The grievant is responsible for ensuring delivery within the specified time limit.

TYPE OF GRIEVANCE	DECIDING OFFICIAL
Letter of Reprimand Suspension of 14 days or less	Official identified in the decision letter
All other matters not excluded by Appendix A	Activity Head. The Activity Head will route to appropriate deciding official

APPENDIX A

EXCLUSIONS FROM THE ADMINISTRATIVE GRIEVANCE SYSTEM

The procedures of this Chapter do not apply to the issues listed below:

1. Content of established regulations and policy.
2. Any matter covered by a negotiated grievance procedure or appealable action to the Merit Systems Protection Board (MSPB), or a matter which is subject to final review by the Office of Personnel Management (OPM), the Federal Labor Relations Authority (FLRA), or the Equal Employment Opportunity Commission (EEOC).
3. Any matter in which the employee files a complaint or other challenge under another review procedure, a reconsideration procedure, or a dispute resolution process within Department of Defense.
4. Non-selection for promotion from a group of properly ranked and certified candidates or failure to receive a noncompetitive promotion.
5. A preliminary warning notice of an action which, if effected, would be grievable or appealable or excluded by paragraph 2 of this Appendix.
6. A supervisor's determination of the work objectives, or the substance of critical elements, and performance standards for an employee's position.
7. Determinations concerning awards, additional step increases, recruitment or relocation bonuses, retention allowance, physicians, comparability or additional pay allowances, supervisory differentials, critical position pay, or dual compensation waivers. Any action taken under a voluntary, formal agreement involving geographic relocation or return from an overseas assignment.
8. An action which terminates a term or temporary appointment or promotion, whether in the competitive or excepted service, in accordance with the conditions of the appointment or promotion, provided the employee was informed in advance of the temporary nature of the appointment or promotion and is returned to his/her former or equivalent position.
9. An action which terminates a probationer, or returns an employee serving supervisory or managerial probation to a non-supervisory or non-managerial position, or separation or termination of an employee during a trial period.
10. For Senior Executive Service (SES) employees, reassignment following receipt of an unsatisfactory rating, return to another pay system during the 1-year period of probation or for less than fully successful executive performance, and failure to be re-certified, conditional re-certification, or termination during probation for unacceptable performance.
11. SES performance evaluation and awards (including meritorious or distinguished executive rank awards) and SES Senior Level pay rate increases.

12. An oral admonishment or letter of caution.

13. A decision to include an employee's position in the pool of Activity positions subject to random drug testing.

14. A separation or termination action not otherwise excluded by this Appendix.